

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 6, 2023

Christopher M. Wolpert
Clerk of Court

CRAIG IVAN GILBERT,

Plaintiff - Appellant,

v.

ROGER SOLDAN; JOHN/JANE DOES,

Defendants - Appellees.

No. 22-3265
(D.C. No. 5:22-CV-03265-JWL-JPO)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

On October 19, 2022, Mr. Gilbert initiated this case by filing a pleading titled “Notice of Removal.” ROA at 4. It stated that he was removing to federal court a “Closed Writ of Habeas Corpus Case” that he filed in the Saline County (Kansas) District

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Court. *Id.* The pleading further stated that the state habeas case concerned “conditions of confin[e]ment.” *Id.*¹

On October 24, 2022, the district court dismissed and entered judgment. ROA at 24. On March 8, 2023, this court affirmed. *Kansas v. Gilbert*, 2023 WL 2397025 (10th Cir. 2023).

On October 28, 2022, in a separate case, the district court issued a memorandum and order imposing filing restrictions on Mr. Gilbert on all existing cases in the U.S. District Court for the District of Kansas. *See* Memorandum and Order Imposing Filing Restrictions, *Gilbert v. Social Security Comm’n*, No. 21-3156-JWL (D. Kan.), Doc. 38.

On November 8, 10, and 17, Mr. Gilbert attempted to submit filings in this case. ROA at 40-42. The district court promptly issued orders denying each filing because none of them complied with the filing restrictions in the October 28 order. *Id.* On November 29, 2022, Mr. Gilbert filed a notice of appeal to challenge these orders. *Id.* at 43.

In his appeal brief, Mr. Gilbert does not address whether the district court erred in entering the orders denying the filings. Failure to raise an issue in an opening brief waives that issue. *See Compania de Inversiones Mercantiles S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 58 F.4th 429, 475 (10th Cir. 2023).²

¹ Because Mr. Gilbert appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

² Though Mr. Gilbert is pro se, he is subject to the same procedural rules governing other litigants. *See United States v. Green*, 886 F.3d 1300, 1307 (10th Cir.

We affirm the district court. We deny Mr. Gilbert's motion for leave to proceed *in forma pauperis*.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

2018) (stating that a litigant's pro se status did not excuse compliance with the general procedural rule).